IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.No.2460 of 2006
.....

M.Shahul Hameed Batcha,
Legal Heir and son of
Late M.S.Mohammed Marzook,
26A, West Avanimoola Street,
Madurai.
Cause title accepted vide order of Court
dt. 13.6.06 made in TCMP 1523/06 ... Appellant

vs.

The Income-tax Officer,
Ward II (1), Madurai
(formerly: the Assistant Commissioner
of Income-tax, Investigation Circle II,
Madurai). ... Respondent

Tax Case Appeal under Section 260A of the Income Tax Act 1961 against the order of the Income Tax Appellate Tribunal, Madras `C' Bench dated 7.3.2005 made in ITA No.2722/Mds/1995 for the assessment year 1982-83 against the order dated 25.9.95 and made in IT/WC/GT/ Appeal No. 528/93-94 on the file of the Commissioner of Income-tax (Appeals), Madras-34 against the order dt. 20.11.84 and made in GI No. 47-020-PV-5105/KDI.I(1) on the file of the Asst. Commissioner of Income tax, Asst. Commissioner of Income Tax, Circle - II, Madurai-2.

For appellant : Mr.V.S.Ramakrishnan

For respondent : Mr.T.Ravikumar, Jr.SC. For IT.

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JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 7.3.2005 made in

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I.T.A.No.2722/1995 and the following substantial questions of law have been raised for consideration:

1. Whether the ratio in the judgments of the Supreme Court reported in Sri Shandilal Sugar & General Mills (168 ITR 705) and Suresh Chandra Mittalal (251 ITR 9) would apply to this case which is before the amendment/introduction of Explanation 1 clause (B) to section 271(1)(c)?

2. Whether on the facts and circumstances of the case, when a non-taxable amount has been offered for assessment even before issue of notice under section 148, due to the inability of the assessee to adduce proof, penalty could be levied by the assessing officer without recording any satisfaction and establishing mens rea that the amount offered is taxable income?

3. Whether the Tribunal has not committed legal error in not adverting to the affidavit by the mother-in-law of the assesee that the deposit of Rs.5 lakhs and the accrued interest thereto in the State Bank of India is not a taxable amount belonging to the assessee, but deposited in his name by her husband?

2. The assessment year with which we are concerned is 1982-83. The facts which are relevant for the purpose of disposal of the tax case appeals are as under:-

2.1. The assessee M.S.Mohamed Marzook, who died on 2.11.2001, got repatriated from Sri Lanka in the year 1975. He married the daughter of a businessman in Sri Lanka, by name, T.O.M.Mustafa. The said Mustafa came to India in 1979 and died in the year 1982. The assessee later received some of his father-in-law's outstandings in Sri Lanka for which he could not adduce proof.

2.2. The assessee filed revised returns before the issue of notice under section 148 of the Income-tax Act, 1961 which was accepted by the assessing officer, but the assessing officer levied penalty on the ground that the assessee filed revised return only after the search that took place at the premises of the assessee on 21.9.1989.

2.3. The Commissioner of Income-tax (Appeals), on appeal, giving benefit of doubt in favour of the asessee in respect of fixed deposit of Rs.5 lakhs and interest accrued, restricted the penalty. But, the Appellate Tribunal confirmed the order of the assessing officer in the department appeal.

3. Heard learned counsel appearing for the appellant and the

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Department. According to the learned counsel for the appellant, the assessee offered the sums as non-taxable income only with a view to purchase peace and avoid prolonged litigation and the assessing officer has not recorded a finding that the income so offered by the assessee is a taxable income and as the assessee neither concealed his income, nor furnished inaccurate particulars, the Appellate Tribunal was not correct in confirming the order of the assessing officer levying penalty.

4. The main points raised in the above questions are,
(i) whether the assessee has deliberately concealed his income or furnished inaccurate particulars; and

(ii) whether the assessee has acted bona fide and honestly filed the revised returns with a view to purchase peace.

5. It is relevant to mention that in similar circumstances, this Court by judgment dated 1.2.2006 in T.C.No.112 of 2000, etc. batch (M.Sajjanraj Nahar v. The Commissioner of Income Tax, Coimbatore) has elaborately considered the above points, in the light of decisions of Supreme Court as well as various High Courts and held as under:

> "It is true, the Apex Court in Sir Shadilal Sugar and General Mills Ltd. v. CIT, [1987] 168 ITR 705 held that a taxpayer might agree to additions to his income for hundred and one reasons, but that by itself would not be sufficient to treat the amount added or surrendered as the concealed income of that taxpayer. The addition of income by filing a revised return, would not absolve the Revenue from proving that such amount added or surrendered is a concealed income or that the assessee had furnished inaccurate particulars. But, in view of the deletion of the word "deliberately" in Section 271(1)(c) of the Act by the Amendment Act, the jurisdiction of the Revenue to initiate penalty proceedings for the concealment of the income or furnishing inaccurate particulars by the assessee has become more liberal and the burden of the assessee to prove that he had not concealed any income nor any inaccurate particulars have become more stringent, subject to the procedure prescribed under the Explanation to Section 271(1)(c) of the Act to enable the assessee to submit his explanation in this regard."

6.8. As rightly pointed by Mr.N.Muralikumaran, learned Senior Standing Counsel for the Revenue, the view of the Apex Court in Sir Shadilal Sugar and General Mills Ltd. v. CIT, [1987] 168 ITR 705 was held no more a good law in the decision of the Apex Court in K.P. Madhusudhanan Vs. Commissioner of Income-tax, [2001] 251 ITR 99, taking note of the explanation to Section 271 of the Act, whereunder it is held as under:

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"Learned counsel for the assessee then drew our attention to the judgment of this court in Sir Shadilal Sugar and General Mills Ltd. v. CIT [1987] 168 ITR 705. He submitted that the assessee had agreed to the additions to his income referred to hereinabove to buy peace and it did not follow therefrom that the amount that was agreed to be added was concealed income. That it did not follow that the amount agreed to be added was concealed income is undoubtedly what was laid down by this court in the case of Sir Shadilal Sugar and General Mills Ltd. [1987] 168 ITR 705 and that, therefore, the Revenue was required to prove the mens rea of a quasi-criminal offence. But it was because of the view taken in this and other judgments that the Explanation to section 271 was added. By reason of the addition of that Explanation, the view taken in this case can no longer be said to be applicable."

6. In the instant case, the assessee filed the revised return only after the search was conducted in the premises of the assessee. The Appellate Tribunal, on the facts of the case, found that the omission or wrong statement by the assessee in the original return was not due to any bona fide or inadvertence or mistake on his part, but the revised return was filed only after the search action. Though it is the case of the assessee that with a view to purchase peace he offered the sums as non-taxable income, the Appellate Tribunal held that there is no material with assessee to show that the mistake had crept in the original return accidentally without any intention warranting deletion of penalty. On the other hand, the Appellate Tribunal found that the reasons assigned by the assessing officer to hold that the assessee had concealed the income are genuine and accordingly, confirmed the penalty.

7. It is a settled law that once the authorities have arrived at a subjective satisfaction under the facts and circumstances of the case, it may not be proper for this Court to enter upon the merits of the controversy at all, and unless it is demonstrated that the indication made by the Assessing Officer to initiate penalty proceedings is mala fide, perverse, based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice, the said proceedings need no interference (vide: judgment dated 1.2.2006 in T.C.No.112 of 2000, etc. batch (M.Sajjanraj Nahar v. The Commissioner of Income Tax, Coimbatore).

8. With regard to 3rd question, the Appellate Tribunal has rendered a finding of fact that the Revenue had established the

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reasons for additions and proved that the addition was on account of concealed income, and we do not find any reason to interfere with the finding of the Appellate Tribunal.

9. For the foregoing reasons, we are of the considered opinion that the Appellate Tribunal was justified in confirming the penalty levied by the assessing officer. We do not see any merit in the appeal. Accordingly, finding no question of law, much less a substantial question of law, the appeal stands dismissed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Assistant Registrar,
   Income-tax Appellate Tribunal,
   Rajaji Bhavan, Besant Nagar,
   Chennai (5 copies with records)

2. The Income tax Appellate Tribunal, Madras 'C' Bench,
   Madras.

3. The Income tax Officer, Ward II(1), Madurai.

4. The Commissioner of Income-tax (Appeals),
   Madras.

5. The Asst. Commissioner of Income-tax, Circle II,
   Madurai-2.

1 CC TO MRS. PUSHYA SITARAMAN, ADVOCATE (SR 50618)

T.C.No.2460 of 2006

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